

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SERVISENSE.COM, INC.	DOCKET NO. FCU-02-17
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**ORDER TO SHOW CAUSE**

(Issued August 27, 2002)

On August 12, 2002, Utilities Board (Board) staff learned that a company using the name "The Iowa-Nebraska Telephone Company" (Iowa-Nebraska) was advertising local exchange services in Iowa without a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001), or registering with the Board, as required by 199 IAC 22.23(3) (2002). Board staff identified a contact person for Iowa-Nebraska and embarked on a series of telephone calls, as described in a letter from John Ridgway, Manager of the Board's Telecommunications Section, to Mr. James L. Cornblatt, Director of Regulatory Affairs for Eastern Telephone, Inc. (Eastern), attached to this order as Attachment A. The Board will take official notice of the letter, pursuant to Iowa Code § 17A.14(4).

Based on the information in Attachment A, it appears ServiSense.com, Inc. (ServiSense) is no longer offering telecommunications services in Iowa in any meaningful sense; instead, the service is being advertised under the name of Iowa-Nebraska and is allegedly being offered pursuant to ServiSense's certificate, which Eastern appears to believe it has purchased, but which has never been transferred

by the Board. If this is correct, then Iowa-Nebraska is offering land-line local telephone service in Iowa without first obtaining a certificate of public convenience and necessity from the Board, as required by § 476.29; it is offering service without having a valid tariff on file with the Board, as required by § 476.4; it is serving the former customers of ServiSense without having obtained each customer's authorization to change the service, as required by § 476.103(3) and the Board's rules at 199 IAC 22.23; and it lacks an up-to-date registration form, as required by 199 IAC 22.23(3). If the Board finds that Iowa-Nebraska, ServiSense, or Eastern is violating one or more of these requirements, or has committed other statutory or regulatory violations that are not yet apparent, then the Board would have to take appropriate action to have the violations stopped.

In order to determine the facts and circumstances surrounding this situation, the Board on its own motion is opening this formal complaint docket pursuant to § 476.3(1) to investigate the actions of ServiSense, Iowa-Nebraska, and Eastern. Those companies will be given an opportunity to show cause why the Board should not find them in violation of one or more of the statutory provisions cited above, or such other provisions of chapter 476 and the Board's rules as may develop through the course of this proceeding. They will also have an opportunity to show why the Board should not take appropriate action if such violations are found, including revocation of ServiSense's certificate of public convenience and necessity, rejection of its tariff, prohibition of other service providers from billing on behalf of the violators

or providing exchange access services to them, seeking an injunction or other appropriate relief in district court, or taking such other action as may be appropriate.

The Board notes that Eastern has responded to the Board staff letter with a letter of August 26, 2002, terminating its marketing and operating agreement with On Systems Technology, LLC, which is apparently the management company for Iowa-Nebraska. (Eastern copied the letter to Board staff.) While Eastern's response is encouraging, the Board still finds it appropriate to take this action today to ensure the protection of the public interest.

The Board is very concerned about this situation, but at the same time the Board does not want the customers of ServiSense to be unnecessarily impacted by any actions the Board may be forced to take. Accordingly, the Board will order that ServiSense, Iowa-Nebraska, and Eastern may not bill any Iowa customers for any services currently being provided by any or all of them in violation of Iowa law and that such arrangements must continue until further order of the Board. In this way, the companies will not be "furnishing communications services to the public for compensation" and therefore will not be "public utilities" as defined in § 476.1, meaning there will be no violations while this docket is pending. The companies will be ordered to file with the Board complete lists of their Iowa customers in order to allow for notification of the customers that they are not required to pay for any services being provided in violation of Iowa law.

Finally, the expenses incurred in this matter by the Board and the Consumer Advocate Division of the Department of Justice will be assessed to ServiSense, Iowa-Nebraska, and Eastern, pursuant to § 476.10.

**IT IS THEREFORE ORDERED:**

1. Pursuant to Iowa Code § 476.3(1), the Board hereby initiates this docket on its own motion for the purposes described in the body of this order, including but not limited to an investigation of whether ServiSense, Iowa-Nebraska, or Eastern is engaged in providing communications services to the public for compensation in violation of Iowa Code §§ 476.4, 476.29, 476.103(3), or other provisions of chapter 476, or in violation of Board rules, including but not limited to 199 IAC 22.23. The matter will be identified as Docket No. FCU-02-17.

2. ServiSense, Iowa-Nebraska, and Eastern shall have until August 30, 2002, to show cause, by appropriate pleadings or other filings, why the Board should not take the actions described in the body of this order to prevent any ongoing violations of chapter 476 and Board rules.

3. ServiSense, Iowa-Nebraska, and Eastern are ordered to cease charging any compensation for any communications services provided in Iowa, until further order of the Board.

4. On or before August 28, 2002, ServiSense, Iowa-Nebraska, and Eastern shall file with the Board complete lists of all Iowa customers they are serving as of the date. They shall file updates to the list each day that any new Iowa customers are added.

5. This order should be served by first-class U.S. mail and facsimile transmission (where possible) on the following persons:

James Cornblatt  
Director of Regulatory Affairs  
Eastern Telephone, Inc.  
115 Shawmut Road  
Canton, MA 02021-1438  
Fax: 781-575-9221

David Johnson and Tim Wetherald  
On Systems Technology, LLC  
Suite 1000  
3025 S. Parker Road  
Aurora, CO 80014

Richard Wheeler  
Regulatory Coordinator  
ServiSense.com, Inc.  
Suite 450  
180 Wells Ave.  
Newton, MA 02459-3302

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27<sup>th</sup> day of August, 2002.

**STATE OF IOWA**

THOMAS J. VILSACK  
GOVERNOR  
SALLY J. PEDERSON  
LT. GOVERNOR

IOWA UTILITIES BOARD  
IOWA DEPARTMENT OF COMMERCE

August 23, 2002

Mr. James L. Cornblatt  
Director of Regulatory Affairs  
Eastern Telephone, Inc.  
115 Shawmut Road  
Canton, MA 02021-1438

**BY FACSIMILE TRANSFER TO  
781-575-9221**

RE: ServiSense/Eastern Telephone/The Iowa-Nebraska Telephone Company

Dear Mr. Cornblatt:

This letter is to advise you that the staff of the Iowa Utilities Board has continued its informal investigation of the Iowa-Nebraska Telephone Company's advertised local exchange service in Iowa and we are extremely concerned about what we have found. As a result, we believe it is necessary that Iowa-Nebraska fulfill its oral commitments and make all the necessary filings with the Board no later than close of business on Monday, August 26, 2002, or we will recommend to the Board that Qwest Corporation be directed to terminate all in-state local exchange services to Iowa-Nebraska based on its lack of a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001) and other violations. Staff's position is based upon the following information:

1. Staff first contacted Iowa-Nebraska on August 12, 2002, by telephone conference with Tim Wetherald, who explained that Iowa-Nebraska is an affiliate of ServiSense and indicated at that time that he would file a "D/B/A" with the Board as soon as possible; no such document has been filed as of the date of this letter.
2. Staff left voice mail messages for Richard Wheeler at 617-848-8107 on August 15, 16, and 19, 2002, regarding the ServiSense tariff and the required carrier identification forms; Mr. Wheeler has never returned the calls.
3. On August 19, 2002, staff left a voice mail message for Ed Schneider at 303-338-4247, who was interviewed that day on a local television station and identified himself as Director of Corporate Development for Iowa-Nebraska. Mr. Schneider apparently arranged for Mr. Wetherald to return the call; Mr. Wetherald indicated that we should have received a letter of some sort. Staff informed Mr. Wetherald that based on the available information, a letter would not be adequate; instead, it appeared that at the very minimum Iowa-

Nebraska needed to amend ServiSense's certificate, tariff, and registration. Mr. Wetherald was asked to fax a copy of the letter he believed to have been sent; no such fax was received. Mr. Wetherald also indicated that you are the new regulatory person for Iowa-Nebraska and would be involved in this matter.

4. On August 20, 2002, Dave Johnson of 303-338-4254 called and left a voice mail message offering to brief staff regarding the company's plans; when staff returned the call and explained our concerns are not with the company's plans but with its lack of a certificate, tariff, and registration, Mr. Johnson stated he would ask you to call us.
5. Later on August 20, 2002, you called Board staff and indicated you would be sending a letter regarding the company's plans and would contact a Board attorney regarding the necessary filings.
6. On August 21, 2002, we received a one-page letter from you stating that Eastern purchased substantially all of the assets of ServiSense at a bankruptcy court auction on February 1, 2002, and that Eastern is managing the assets, customers, and licenses of ServiSense pending receipt of the various regulatory and customer approvals necessary to transfer the ServiSense customer base to Eastern. This last point is of concern to Board staff because neither Eastern nor ServiSense has filed with the Board for any of the required regulatory approvals, even though there has been ample time to do so, yet Iowa-Nebraska has commenced advertising local exchange services in Iowa.

Based on this series of events, Board staff contacted staff members at other state public utility regulatory commissions and learned the following:

1. Tim Wetherald appears to have been involved in the management of a number of state-specific telephone companies, including "The Phone Company of Arizona, L.L.P.," "The Phone Company of Minnesota, L.L.P.," "Mile High Telecom," GTI Telecommunications, Inc., and others.
2. A review of the Web site for The Phone Company of Arizona, L.L.P., indicates the company is, in fact, a multi-level marketing enterprise.
3. Minnesota Commission staff informs us that The Phone Company of Minnesota, L.L.P., is being investigated for operating in the state without proper authority.
4. Mile High Telecom offers service in Colorado, where PUC staff tells us they have been working with the company since September of 2001 in an attempt to have the company obtain proper authorization, but have nothing to show

for their efforts except broken commitments and a stipulation that the company first violated, then repudiated, leading to re-opening of a pending show cause proceeding.

5. GTI Telecommunications, Inc., provided long distance resale service in the State of Washington, where the company, and Mr. Wetherald personally, were ultimately the defendants in an action in state court. That action culminated in a 1995 permanent injunction and restraining order prohibiting Mr. Wetherald from engaging or participating in any way in the sale of long distance telecommunications services to any Washington resident without first having an approved tariff on file with the Washington Commission, a valid resale agreement, and other requirements. The press release accompanying the consent decree indicates that Mr. Wetherald had taken three different corporations into bankruptcy in the preceding 5 years; that his actions left 2,500 individuals and businesses without reliable long distance service; and that this was all accomplished through a multi-level marketing enterprise. The press release also states that Mr. Wetherald was the subject of a similar 3-year injunction in Oregon in 1991.

Under these circumstances, Board staff is extremely concerned about the actions of Iowa-Nebraska Telephone Company and its continued failure to obtain the necessary authorizations prior to offering telecommunications service in a state. Again, this letter is intended to advise you that if proper documentation is not filed with the Board by close of business on Monday, August 26, 2002, Board staff will recommend to the Board that Qwest Corporation be directed to discontinue provision of any and all local services to Iowa-Nebraska Telephone Company.

Sincerely,

John Ridgway  
Manager, Telecommunications